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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/847,625
Filing Date: May 02, 2001
Appellant(s): ROVIRA, LUIS A.

Anthony F. Bonner, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/26/07 appealing from the Office action
mailed 1/26/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6772433	LAJOIE	8-2004
6211901	IMAJIMA	4-2001

5751282	GIRARD	5-1998
5682597	GORDON	10-1998
5534912	KOSTRESKI	7-1996

www.thestranger.com

WO 99/60790, Ellis, Michael D, 25 November 1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

II. Claims 1, 3, 4, 7, 8, 10-12, 18-21, 25, 28, 29, 35, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ellis*. (WO 99/60790) in view of U.S. Patent 6,772,433 to LaJoie and U.S. Patent 6,211,901 to Imajima.

Claim 1 recites a method for providing media services comprising limitations, which are too numerous to recite herein, however each will be addressed in turn. As discussed in a previous action, dated 4/15/2005, *Ellis* discloses a system, which provides a user with an IPG (Pg. 1, Ln. 4-7) identifying a future program (Pg. 13, Ln 7-10). A user is allowed to request said future program prior to its later scheduled broadcast time (i.e., user defined time prior to later start time). (Pg. 3, Ln. 7-10; Pg. 26, Ln. 4-7).

But, *Ellis* fails to teach whether the requested program is “otherwise available only via a scheduled broadcast to a plurality of users at a predetermined later time”, and providing said user with an option to view the scheduled future television program at a user-defined time. However, it is well known in this art for newly released programs to be available on VOD, pay-per-view, or any other similar system before they are available on non-pay television. This enables movie companies and content providers to receive additional profit. For Example, *Ellis* Figure 8, discloses the *Truman Show* being offered immediately in November of 1999 (PCT Publication date). A user is allowed to set a time for when he or she would like to view The Truman Show, but, it is not clear whether *The Truman Show* is “otherwise available only” via a later broadcast. However, the cited NPL reference (i.e., thestranger.com reference) shows the Truman Show being publicly available on NBC in February of 2001. These references, taken in combination, teach an IPG displaying a future television program (i.e., Truman Show), said future television program scheduled to be broadcast at a later time (i.e., on NBC in 2001), whereby the user is allowed to receive the program in advance of the later schedule time.

Furthermore, when taken in combination, it is inherent that the user would not otherwise receive the program in advance of its 2001 NBC date, unless he or she requested it in advance. Therefore, the *Truman Show* would be “available otherwise only” as a later scheduled broadcast on NBC. Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant’s invention to modify the teachings of *Ellis* with what was well known (as evidenced by “thestranger.com”

reference) to provide a system which allows a user to request programs in advance of their exclusive future broadcast date, thereby providing an additional method of television revenue.

Ellis in combination with thestranger.com fails to disclose providing said user with an option to view the scheduled future television program at a user-defined time and the IPG being configured with a user option to highlight at least one schedule program in the television program schedule, and in response to the highlight enabling the program to be view the program at a viewer defined time.

LaJoie discloses an EPG system in which a user may highlight scheduled PPV and IPPV programs , the detailed information displayed for each program changes as a new program is highlighted in the window (figures 13, 18, 25-32, column 24, lines 1-28), thus making it easy to tell which program is the active program via the use of a highlight. The Examiner further notes that the open ended comprising language in the instant claim does not prohibit any additional steps between the highlighting step and the providing a user with an option step.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Ellis in combination with the stranger.com to utilize the highlighting functionality as taught by LaJoie, in order to make it easy for a user to recognize which program is the active program and aide the user to choose programming by displaying the program information for the currently highlighted program.

Ellis in combination with thestranger.com and LaJoie fails to disclose providing said user with an option to view the scheduled future television program at a user-defined time

Imajima discloses that a user may select a program which is to be broadcast at a regularly scheduled future time via an NVOD service (figure 5, column 1, lines 35-40), a user may also request to view the program at a viewer defined time via the FVOD service (figure 7, column 1, lines 35-45) as the program is streamed to the user immediately and the user does not have to wait for the next NVOD broadcast to be able to watch the program, thereby providing a convenient and flexible way for a user to enjoy programming.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Ellis in combination with thestranger.com to include the combination NVOD/FVOD features of Imajima for the advantages of allowing the program to be streamed to the user immediately and the user does not have to wait for the next NVOD broadcast to be able to watch the program, thereby providing a convenient and flexible way for a user to enjoy programming.

Claim 36 corresponds to Claim 19. Thus, it is analyzed and rejected as previously discussed with regards to claim 1.

As to claim 3, *Ellis* further discloses charging a user a fee in connection with the provision of programs. (Page 13, Ln. 18-20). Accordingly, the modified system of *Ellis* renders obvious all limitations of Claim 3.

Applicant's claim 4 recites a method of charging a user a fee in connection with providing access to future programs. As discussed under Claim 3, *Ellis* discloses a method of charging a user a fee in connection with the "provision" of a later scheduled program, but fails to teach a method of charging said user a fee in connection with providing "access" to said programs. However, it would have been obvious to one ordinarily skilled in this art at the time of applicant's invention to modify the billing method of *Ellis* to also include charging the user for having "access" to the future television programming. Charging a fee for access to a program is an obvious variant of charging a fee for the provision of the program, thereby allowing the content provider an additional avenue of charging a user.

Claim 21 is an apparatus claim corresponding to the method claim 4, and is analyzed and rejected as previously discussed.

As to claim 7, *Ellis* further discloses an IPG which list information pertaining to program titles, times, channels, and descriptions. (page 3, Ln. 1-3). Accordingly, the modified system of *Ellis* renders obvious all limitations of Claim 7.

As to claim 8, *Ellis* further discloses an IPG, which utilizes a remote control device in order to display program information and to display the later schedule programs. (page 3, Ln 5-9). Accordingly, the modified system of *Ellis* renders obvious all limitations of Claim 8.

As to claim 10, *Ellis* further discloses an IPG in which television programs are received from a broadcasting network or i.e., content provider. (Page 1, Ln. 11-13). Accordingly, the modified system of *Ellis* renders obvious all limitations of Claim 10.

As to claim 11, *Ellis* discloses a method of storing a video on demand program within a home storage device (page 24, Ln. 4-9). Accordingly, the modified system of *Ellis* renders obvious all limitations of Claim 11.

Claim 28 is an apparatus claim corresponding to the method claim 11, and is analyzed and rejected as previously discussed.

As to claim 12, *Ellis* further discloses an IPG system, which stores programs in devices capable of being connected, i.e., coupled, to a set-top box, i.e. client device. (Page 15, Ln. 28-32). Accordingly, the modified system of *Ellis* renders obvious all limitations of Claim 12.

As to claim 18, *Ellis* further discloses an IPG, which provides user with access to current television programs (page 13, Ln. 10). Accordingly, the modified system of *Ellis* renders obvious all limitations of Claim 18.

Claims 19, 20, 25, 29 and 35 are apparatus claims corresponding to the method claims 1, 3, 7, 12, and 18 respectively. Accordingly, claims 19, 20, 25, 29 and 35 are analyzed and rejected as previously discussed.

III. Claims 2 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ellis* in view of U.S. Patent 6,772,433 to LaJoie and Imajima (US #6,211,901) in further view of *Kostreski* (US #5,534,912).

Applicant's claim 2 recites the method of Claim 1, further comprising confirming a user's authorization to receive a television program. As discuss above, the modified system of *Ellis*, *LaJoie and Imajima* renders obvious all limitations of Claim 1, but fails to teach the use of any method of authorization. Within the same field of endeavor, *Kostreski* teaches a means for indicating which channels are authorized to a user. (Col 8, Ln. 3-22). Accordingly, it would have been obvious to one ordinarily skilled in this art at the time of applicant's invention to combine the modified system of *Ellis*, *LaJoie and Imajima* with the authorization means of *Kostreski* in order to provide an efficient mechanism for verification.

Claim 22 is an apparatus claim corresponding to the method claim 2, and is analyzed and rejected as previously discussed.

IV. Claims 5, 6, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ellis* in view of U.S. Patent 6,772,433 to LaJoie and Imajima (US #6,211,901) in further view of *Matthews*, III (US #5815145).

Applicant's claim 5 discloses an IPG which contains a table corresponding to individual episodes of a given future television program. As discussed above, the modified system of *Ellis*, *LaJoie and Imajima* renders obvious all limitations of Claim 1, but fails to disclose an IPG containing a episode database. However, within the same field of endeavor, *Matthews*, III, discloses an IPG database containing episodes corresponding to television programs. (Col. 7, Ln 48-49). Therefore, it would have been obvious to one ordinarily skilled in this art at the time of applicant's invention to combine the modified system of *Ellis*, *LaJoie and Imajima* with the episode database of *Matthews* III in order to provide a more detailed and extensive program list for the user to choose from.

Claim 23 is an apparatus claim corresponding to the method claim 5, and is analyzed and rejected as previously discussed.

As to claim 6, *Ellis* further discloses that the programs listed in the IPG could be sit-coms or dramas, but fails to specifically list whether programs could be soap-operas. (Page 18, Ln. 20-21). However, claim 6 recites a Markush Group, which are anticipated if it is shown that one alternative is contained within the prior art. Accordingly, the modified system of *Ellis* renders obvious all limitations of Claim 6. (Moreover, the examiner would like to note that soap operas are considered to be an obvious variant of

a sit-com or drama, which were combined to provide a more exhaustive listing and would be rejected accordingly.)

Claim 24 is an apparatus claim corresponding to method claim 6, and is analyzed and rejected as previously discussed.

V. Claims 9, 15, 16, 17, 27, 32, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ellis* in view of U.S. Patent 6,772,433 to LaJoie and Imajima (US #6,211,901) in further view of *Girard et al.* (US # 5,751,282).

Applicant's claim 9 recites the method of claim 1, wherein the future television program is received from a headend. As discussed above, the modified system of *Ellis*, LaJoie and Imajima renders obvious all limitations of Claim 1, but fails to specifically state that the program can be received from a headend. However, within the same field of endeavor, *Girard* teaches a video signal being received from a head end. (Col. 3, Ln 8-10). Accordingly, it would have been obvious to one ordinarily skilled in this art at the time of applicant's invention to combine the modified system of *Ellis*, LaJoie and Imajima with the headend teaching of *Girard* in order to provide a multi-tier distribution structure.

Claim 27 is an apparatus claim corresponding to method claim 9, and is analyzed and rejected as previously discussed.

Applicant's claim 15 recites the method of claim 1, wherein the future program is stored in a device located inside a cable television system. As discussed above, the modified system of *Ellis, LaJoie and Imajima* renders obvious all limitations of Claim 1, but fails to specifically disclose whether a storage device is located inside a cable television system. Within the same field of endeavor, *Girard* discloses a program storage device, which is contained within a cable television system. (Fig. 1). Accordingly, it would have been obvious to one ordinarily skilled in this art at the time of applicant's invention to combine the modified system of *Ellis, LaJoie and Imajima* with the storage device of *Girard* in order to provide an alternative method of storing said future programs.

Claim 32 is an apparatus claim corresponding to the method claim 15, and is analyzed and rejected as previously discussed.

Applicant's claim 16 recites a method of claim 1, wherein the future program is stored in a device coupled to a cable television system. As discussed above, the modified system of *Ellis, LaJoie and Imajima* renders obvious all limitations of Claim 1, but fails to specifically state whether a storage device is coupled to a television system. Within the same field of endeavor, *Girard* discloses that the program storage device is contained within or, i.e., coupled to, a cable television system. (Fig. 1). Accordingly it would have been obvious to one ordinarily skilled in this art at the time of applicant's invention to combine the modified system of *Ellis, LaJoie and Imajima* with the cable

system storage teaching of *Girard* in order to provide an alternate method of storing said future programs.

Applicant's claim 17 recites the method of claim 1 wherein the user is provided with access to previously broadcasted television programs. As discuss above, the modified system of *Ellis, LaJoie and Imajima* renders obvious all limitations of Claim 1, but fails to specifically discuss providing access to previously broadcasted television programs. Within the same field of endeavor, *Girard* teaches the user's access to previously broadcasted television programs. (Col. 2, Ln. 19-21 & 30-32). Accordingly, it would have been obvious to one of ordinary skill in this art at the time of applicant's invention to further modify the system of *Ellis, LaJoie and Imajima* to provide access to previously broadcasted programs in order to provide the user with a wider selection of programs to choose from.

Claims 33 and 34 are apparatus claims corresponding to the method claims 16 and 17, respectively. Accordingly, they are analyzed and rejected as previously discussed.

VI. Claims 13, 14, 30, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ellis* in view of U.S. Patent 6,772,433 to LaJoie and Imajima (US #6,211,901) in further view of *Gordon et al.* (US #5,682,597).

Applicant's claims 13 and 14 recite methods of storing said television programs in either a hub or node, respectively. As discussed above, the modified system of *Ellis, LaJoie and Imajima* renders obvious all limitations of Claim 1, but fails to specifically state whether programs can be stored in hubs or nodes. Within the same field of endeavor, *Gordon* teaches the use of hubs and nodes, which are used to store video programs. (Col. 1, Ln. 65-68). Accordingly, it would have been obvious to one ordinarily skilled in this art at the time of applicant's invention to combine the modified system of *Ellis, LaJoie and Imajima* with the hub and node storage teaching of *Gordon* in order to provide alternate methods of storage.

Claims 30 and 31 are apparatus claims corresponding to method claims 13 and 14, respectively. Accordingly, they are analyzed and rejected as previously discussed.

(10) Response to Argument

Arguments with respect to claim 1:

Appellant argues that *Ellis* in view of *TheStranger*, *LaJoie and Imajima* fails to disclose applicants invention, in particular, teaching a TV program being scheduled for broadcast to a plurality of users at a predetermined current time, a scheduled future program being available to be broadcast to a plurality of users of a later predetermined later time, the IPG being configured to provide a user opinion to highlight at least one scheduled program, in response to a user highlighting said future TV program, providing the user with an option to view the highlighted scheduled future TV program at a user defined time. More specifically Appellant's argue, that *Ellis* shows a program guide

system with VOD browsing, which enables a user to schedule a VOD program for independent viewing which can be later rescheduled for further independent viewing. Appellants submit that this is different from the features as claimed (pages 8-10).

As a preliminary matter, the Examiner submits that through the combination of features taught in Ellis, TheStranger, LaJoie and Imajima, the Examiner has met the following requirements to present a Prima Facie case of obviousness:

- 1), there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.
- 2) there must be a reasonable expectation of success.
- 3) the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Ellis is relied upon to teach an electronic program guide which offers VOD functionality. In figure 2, television listings, VOD listings, Pay per view listings etc are transmitted to a regional facility 26 and in turn to the user equipment over analog, digital, out of band or other methods (page 9, line 11-page 10, line 24, page 11, line 29-page 23, line 14). The listings data includes data for current programs, future programs and Video on demand programs which include start times and ending times (page 13, lines 7-32). A STB may be used to implement an interactive program guide to present

the information and present VOD listings as well (page 15, lines 17-27, page 16, lines 10-22). A remote control may be used to scroll through listings or directly select a program via the keypad (page 16, lines 24-page 17, line 7), a user may access the guide by opening a browse mode which displays regularly broadcast programs (broadcast meaning programs broadcasted to a plurality of users including at a current time) and access VOD listings (page 18, lines 6-15).

While in a VOD menu, a user may access a pull down menu that presents a list of start times (the examiner equates this to a listing of defined start times for a future program, see page 23, lines 6-25). Further a user can order a program at a current time (for immediate consumption, page 24, lines 4-6, likewise a user can use the program guide as previously discussed to watch a current broadcast program see page 24, lines 11-24), or at future program at a user defined time (page 25, line 28-page 26, line 7). A reminder may be used which when presented enables a user to watch the program at the scheduled time, watch the program immediately, or reschedule the program at a another time (page 26 lines 1-10).

While Ellis does disclose currently broadcasted program, scheduled future programs (listings at later times, and pay per view programming listings), and user defined start times (VOD instantly transmitted) likewise utilizing keys to scroll through listings, Ellis fails to specifically teach highlighting a future scheduled TV program and providing a user with an option to view the highlighted scheduled program at a user defined time, the future television programs only being otherwise available only via a scheduled broadcast.

In an analogous art, LaJoie is relied upon to teach a program guide with highlighting functionality for both pay per view programming (future scheduled programs which are broadcasted to a plurality of users at defined start times but require a purchase to view) and also provides NVOD programming (programs which shorter interval, but fixed start times than traditional pay per view, column 32, line 65-column 33, line 51). A user utilizes a highlighted cursor to browse both regular listings and IPPV listings and provides additional information on each listing for the currently highlighted program (see figures 10-18, column 24, line 48-column 25, line 29).

The examiner notes this meets the definition of highlighting

<http://dictionary.reference.com/browse/highlight>

1. to emphasize or make prominent.
 2. to create highlights in (a photograph or engraving).
- noun
3. Also, high light. an important, conspicuous, memorable, or enjoyable event, scene, part, or the like: the highlight of his talk; the highlight of the concert series.
 4. the area of most intense light on a represented form, as in a painting or photograph.

Namely by emphasizing and making prominent the currently selected portion. which is broadcasted to a plurality of users. This provides an advantage over Ellis's scrolling menus by making it very easy for a user to recognize which program is the selected program with the highlight.

More specifically a user may use up/down buttons on a remote control to highlight the currently selected listing via the highlighted cursor which is a box that surrounds the currently selected item. The IPPV may be selected via this highlight on a

regular listings of channels via the up and down keys, a listing of start times may then be presented to the user (column 31, line 15-65). The examiner further notes the open ended comprising language in the instant claims do not prohibit any additional steps between the highlighting step and the selection step and do not require a display option which appears after that point, merely enabling a user to select an option after highlighting a program would meet the claim language.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the scroll menus with future broadcast times of Ellis to utilize the highlighting features and start time selection features as taught by LaJoie for the advantages of making it easy for the user to recognize which program is the currently active selected program and aide the user to choose programming by displaying program information for the currently selected/highlighted program (column 31, lines 60-62, figures 26,28,29).

While the combination of Ellis and LaJoie teach the highlighting functionality and making PPV programs (programs scheduled for broadcast to a plurality of users, but require purchase to be viewed), the times are defined by the program provider and not by a user, nor are the at a time prior to the later scheduled time for broadcast to a plurality of viewers.

Imajima discloses that a user may select a program which is to be broadcast at a regularly scheduled future time via an NVOD service (figure 5, column 1, lines 35-40), a user may also request to view the program at a viewer defined time via the FVOD service (figure 7, column 1, lines 35-45) as the program is streamed to the user

immediately and the user does not have to wait for the next NVOD broadcast to be able to watch the program, thereby providing a convenient and flexible way for a user to enjoy programming. The examiner notes that NVOD programs are broadcasted on a regularly scheduled broadcast, and by the user electing to start the program immediately without waiting for the next NVOD broadcast, the user has sent input requesting a program at a user defined time (current time) which is not a scheduled future television time.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Ellis in combination with thestranger.com to include the combination NVOD/FVOD features of Imajima for the advantages of allowing the program to be streamed to the user immediately and the user does not have to wait for the next NVOD broadcast to be able to watch the program, thereby providing a convenient and flexible way for a user to enjoy programming.

The Examiner therefore submits that the Examiner has provided suggestion or motivation to modify the references and combine the reference teachings. Further the Examiner notes that the electrical arts are extremely predictable and the examiner has met the requirement for a reasonable expectation of success. Further, Appellant has not provided any evidence to rebut the presumed success. Additionally the Examiner, through the prior art has taught each and every claim limitation.

The Examiner further notes per KSR, that the Examiner has combined prior art elements according to known methods to yield predictable results, used known techniques to improve similar devices and methods in addition to providing teaching and suggest in the prior art references.

Appellant argues that LaJoie fails to overcome Ellis' deficiencies, that while LaJoie appears to disclose a highlighted program summary, it fails to teach the scheduling features to a plurality of users a predetermined current and later time, providing a an option to view the scheduled future TV program at a viewer defined time. (Pages 10-11).

In the above section, the Examiner addressed that LaJoie teaches highlighting and enabling a user to select a predetermined time. It is however the combination of Ellis, LaJoie and Imajima which is relied upon to teach these features.

Appellant argues that TheStranger and Imajima fail to disclose the claim features and that at most Imajima discloses an NVOD and FVOD capabilities. (Page 11).

In the above section, the Examiner addressed that Imajima is relied upon to teach the user being able to select a scheduled future time of a broadcasted program or enabling a user to select the same program for immediate viewing. It is however the combination of Ellis, LaJoie and Imajima which is relied upon to teach these features.

Arguments regarding claim 19:

Appellant presents substantially similar arguments in respect to claim 1. (Pages 11-15).

The Examiner has addressed the same arguments in respect to claim 1. Therefore it is the combination of features disclosed in Ellis, LaJoie, TheStranger and Imajima which teach each and every element of the claims.

Arguments regarding claim 36:

Appellant presents substantially similar arguments in respect to claim 1. (Pages 15-19).

The Examiner has addressed the same arguments in respect to claim 1. Therefore it is the combination of features disclosed in Ellis, LaJoie, TheStranger and Imajima which teach each and every element of the claims.

Arguments regarding claims 3-4, 7-8, 10-12, 18, 20-21, 25, 28-29 and 35 36:

Appellant argues that the claims are allowable as the claims depend from allowable independent claims 1 and 36. (Page 9).

The Examiner has addressed the Appellant's arguments in respect to claims 1 and 36, with the additions of Kostreski, Matthews III, Girard and Gordon for their respective claim sets. Therefore it is the combination of features disclosed in Ellis, LaJoie, TheStranger and Imajima, with the respective Kostreski, Matthews III, Girard and Gordon references which teach each and every element of the dependent claims and the dependent claims remain properly rejected.

(11) Related Proceeding(s) Appendix

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Hunter B. Lonsberry



Conferees:

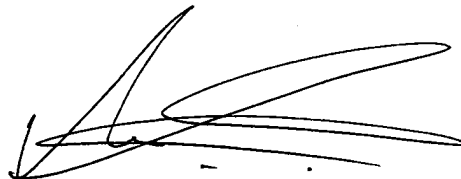
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